

APR 06 2007

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**TRANSMITTAL
FORM**

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		Application Number	09/920,961
		Filing Date	08/03/2001
		First Named Inventor	Edwin Lyda
		Art Unit	2623
		Examiner Name	Tran, Hai V.
Total Number of Pages in This Submission	5	Attorney Docket Number	LYDA-01

ENCLOSURES (Check all that apply)			
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	After Allowance Communication to TC	
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences	
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)	
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<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):	
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<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____		
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ATTN: To Andrew Faile, Director, Art Unit 2623			

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Annelin and Gaskin		
Signature	<i>Mary J. Gaskin</i>		
Printed name	Mary J. Gaskin		
Date	April 6, 2007	Reg. No.	30,381

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature	<i>Mary J. Gaskin</i>		
Typed or printed name	Mary J. Gaskin	Date	4/6/07

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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In re Application of: Edwin Lyda	}	Date: April <u>6</u> , 2007
Application No.: 09/920,961	}	Group Art Unit: 2623
Filed: 08/03/2001	}	Examiner: Tran, Hai V.
For: Distance Learning System	}	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Andrew Faile, Director

REQUEST FOR REPLACING EXAMINER; EXPEDITING APPEAL

I am the attorney prosecuting the above-referenced application. As a member of the U.S. Patent Bar for over 25 years, I have always been able to work with Examiners in achieving fair results for my clients and the patent office. However, in view of the actions (or inactions) taken by the present Examiner, Hai V. Tran, I must request that this application be assigned to a different Examiner.

If you review the file history, you will understand my frustration. The most basic request, entry of a Power of Attorney, which was filed on March 24, 2005, along with an affidavit by Edwin Lyda, the inventor, was ignored for almost a year! After it was filed, Hai Tran sent at least three office actions to Mr. Lyda's previous attorneys. Each time I reminded him of the change, he failed to ensure that the Power of Attorney was entered. Finally, on March 3 and March 8, 2006, I called a supervisor, who personally made sure the document, which had been filed a year before, was entered. "Acceptance" of the power of attorney was mailed on March 9, 2006. Apparently, Hai Tran failed to understand

the importance of ensuring that USPTO correspondence was sent to the authorized representative, not to a firm that had no further business with the applicant.

Subsequent thereto, applicant filed a Notice of Appeal (3/22/06) and an Appeal Brief (4/27/06). The USPTO received the Appeal Brief on May 1, 2006, and on May 4, 2006 forwarded it to Hai Tran. More than two months later, on July 14, 2006, Hai Tran reopened prosecution, sending an office action which regurgitated his previous rejection (which had precipitated the appeal). I was unable to discern a basis for reopening prosecution since no new references were directed at the independent claims. I called Christopher Kelley, Hai Tran's supervisor, who indicated prosecution was reopened based on the need for a shored-up rejection to Claim 3, a dependent claim. In our conversation, I discussed the differences between the present claims and the Ferris reference. He suggested I fax him proposed claims which would further distinguish over Ferris, and I did so. He left a telephone message indicating it appeared we had claimed over Ferris, and he suggested I reply to the rejection with the amended claims. Over two months later, I received Hai Tran's rejection, once again citing Ferris.

I immediately reopened the appeal by filing a Notice of Appeal, followed by an Appeal Brief, which was received by the USPTO on December 4, 2006. For some reason, it was not forwarded to the Examiner until January 9, 2007. Thereafter, another two months passed without a reply. I finally telephoned Christopher Kelley to find out why Hai Tran had not filed a timely response. He directed me to Scott Beliveau, Hai Tran's acting supervisor. Mr. Beliveau had been present at an appeal conference held the week before, and he indicated that the Appeal Brief I had filed almost 3½ months earlier had been found

to be defective for two reasons:

- (1) I had sometimes used the term "applicant" instead of "appellant"; and
- (2) I had corrected a typographical error in one of the claims.

Needless to say, I was quite chagrined that I would need to file an amended brief and would have to wait several more months for the Examiner's reply (or for some other delay tactic to occur). I was also at a loss to understand why I had not been so informed much sooner; the "defects" should have been readily ascertained when Hai Tran received the brief at the beginning of January, and I could have filed a corrected brief then.

The last straw came when I received the actual Notification of Non-Compliant Appeal Brief, signed by Hai Tran. He referred to the two items mentioned by Mr. Beliveau, but he had also checked Box 4 and stated under Box 10:

"Limitation in independent claims 1, 13, 20, i.e., the mechanism operating without receiving signals eliciting a response by the user, does not correctly refers to Appellant's specification pages and line number because the referred pages and lines do not support that limitation."

Since my brief already contained the information required by Box 4, I called Mr. Beliveau, who, after reviewing the Notice, indicated that I should ignore the checkmark by Box 4 and the language under 10 about the limitations. Apparently, Hai Tran had added that requirement without discussing it with his supervisors, thinking I would not be able to file an amended brief that would comply (since I had already provided material which I viewed as satisfying the requirement).

I have no doubt that Hai Tran is doing everything he can to delay the prosecution and appeal of the present application. His office actions always contain language that is difficult to comprehend; he displays less than adequate skill in communicating in English.

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His arguments are convoluted and indicate that he does not understand the claims. Both the inventor and I feel that, if someone other than Hai Tran were to read the specification, the Ferris reference, and our Appeal Brief, the claims would be found to be allowable over Ferris. The inventor is becoming increasingly disheartened because no one in the patent office (other than Hai Tran) has read the documents and, consequently, no one understands the need for and usefulness of the technology involved. Under 35 U.S.C. §§101-103, he has a right to have a patent granted (the Ferris reference has no application whatsoever to his claims). I have never before requested that an Examiner be removed from an application I've been handling. However, the events that have transpired require me to do so.

Further, in view of the lengthy delays associated with this case, I request that the appeal be expedited, to the greatest extent feasible.

Please contact me if you have any questions or comments.

Date: April 6, 2007

Respectfully submitted,

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cc: Mr. Scott Beliveau
Mr. Edwin Lyda

C:\A&G\Patents\lyda\rqexaminer